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Los Angeles Regional Water Quality Control Board Annual Retreat Minutes Saturday, July 28, 2001

The Los Angeles Regional Water Quality Control Board met for its annual retreat on Saturday, July 29, 2001, at the Fairmont Miramar in Santa Monica. Attachment 1 is the Meeting Agenda. In attendance were:

Board Members present were:

Chairman H. David Nahai
Vice-chair Francine Diamond
Tim Shaheen
Susan Cloke
Brad Mindlin

Staff present were:

Dennis Dickerson
Deborah Smith
Dennis Dasker
Wendy Phillips
Art Heath
Dave Bacharowski
Paula Rasmussen
Jon Bishop
Mark Pumford
Robert Sams
Michael Lauffer
Marianne Yamaguchi

Others

Nancy Sutley, Cal/EPA
Beth Jines, Cal/EPA
MaryJane Forster Foley, member of the public

INTRODUCTION

The meeting started at 8:55; Chairman Nahai felt that the table needed no introductions with the exception of Beth Jines from Cal/EPA. Ms. Mary Jane Forster Foley was introduced upon her arrival.

AGENDA CHANGES/ADDITIONS

California Environmental Protection Agency



Recycled Paper

Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

There was a general discussion about the agenda. The following topics were briefly discussed or considered:

Legal Priorities – the board was introduced to the large number of tasks that are being reviewed by legal staff

Migden vs. Discretionary ACLs – the board was advised of the growing number of Migden mandatory penalty cases that are being identified by staff

Organizational Chart and the Number of Vacancies- the board was advised of the progress made during the past year to fill vacancies

Board priority Tracking Chart- Several suggestions were made regarding the revision of the priority tracking chart:

Addition of lawsuits to the status column of Environmental Justice

Modifications to the priority charts to add details

Board Priorities will probably stay the same for this fiscal year. Stormwater and TMDL programs will need to gear up to meet expectations

Ms. Cloke asked that we add a #8 to our accomplishments to provide information on the number of sites cleaned up.

Dennis Dasker stated that #7, which entailed developing a list of PRPs, is done and should be updated.

Mr. Mindlin asked for 5-10 tasks to be accomplished this fiscal year.

Dennis Dickerson was asked to update the form and return it to the Board.

Action Item – remove the priority column from the Board Priority Status Sheet to select the Board's sense that all listed items should be treated at an equally high level of attention.

Marianne Yamaguchi suggested that we add the Water Quality Awards to the Outreach accomplishments.

Given that so many new staff have joined the board, training for new staff, brownbag lunches as a forum to pass on information, section meetings that include training, shared experiences at staff meetings, and mentoring were all encouraged

SEPs are currently self-identified and are in small amounts. Consolidation discussion is necessary (discussed at greater length later in these minutes)

Discussion of CLCV Ed Fund Memorandum of July 27, 2001

Board member Diamond provided copies of a memo from Joe Lyou of the California League of Conservation Voters which addressed the Basin Plan use of MCLs for cleanup in our region as compared to the Central Valley Region which considers health and ecological concerns. The principal issue being a perceived concern over "forum shopping" (where most would rather deal with Regional Board 4 because of the perception that less stringent standards are applied). A discussion ensued between board and staff explaining the protocols in place. The general question remained at the end of the discussion: Should the Regional Board modify established procedures for cleanups?

Action Item: EO is to consider formation of a group to deal with the problem and to prepare a briefing paper for the board and to schedule a meeting to discuss this matter

DISCUSSION OF EXISTING BOARD PRIORITIES

Chromium Contamination – Art Heath provided an overview of the activities and status for this priority - in San Fernando Valley, 100% of the inspections have been completed. The MCL is used for groundwater cleanup, and an attenuation approach is used for soil cleanups. Since Cr⁺⁶ isn't fully studied for ingestion, the total chromium standard is used. Art Heath stated that the cleanup levels used to be background and also pointed out that a high priority is the identification of potential sources around production wells.

Chairman Nahai suggested that we may want to look into the Cr⁺⁶ standard for cleanup at various sites, given the current review and the potential for the standard to be modified in the future. Chairman Nahai stated that board member Diamond's reason for bringing up the issue is that DTSC is using the PHG, leading back to the concern over "forum shopping".

Dennis Dickerson advised Board members that a regional groundwater contamination strategy is needed.

Action Item -- Chairman Nahai wants to hear from staff, at a board meeting or by memo, as to what steps will be accomplished this fiscal year.

1. Los Angeles River Beautification – Deborah Smith updated the Board on our priority to attend meetings in the watershed, make presentations to update attendees, work with stakeholders for acquisition of Prop 13 monies, coordinating the watershed approach.

Ms. Cloke and Chairman Nahai agreed that the trash TMDL should be added to multiple priorities on the board priority list. Volunteer monitoring programs should also be added to the list and maybe even the illicit discharge program. Chairman Nahai also suggested that we mention nutrient and bacterial TMDL status as items on the board priority list. The LA River is a very high board priority and signature issue.

2. MTBE – Dave Bacharowski provided an update that paralleled the points in the *Board Priority Status Sheet*.

Ms. Cloke asked if we are making sure that no one is drinking impacted ground water. Dave stated that the GeoTracker program identifies wells impacted and wells are closed when levels are greater than 5 ppb. Staff use a standard approach for investigation (with a priority on wells within a 1/2 mile of production wells).

Chairman Nahai asked for the status on the MTBE ban. David Bacharowski replied that there is a December 2002 ban without waiver. Refineries must use oxygenates for non-attainment zones. Beth Jines added that Cal/EPA is exploring options, but the deadline for comment is early September.

David Bacharowski brought up the case of the Burbank Operable Unit, where MTBE found is from the air stripper (air input instead of contaminated ground water input of MTBE). The Harrison (Claremont) Southern California Water Company well has hits of MTBE, and an



investigation has been opened. Port Hueneme's treatment system was outlined and there is no discharge from the cleanup to surface waters.

David Bacharowski explained that A1 sites are the priority. A1 sites are those within 1000 feet of a production well. We are now taking more conservative stance and considering sites within 300 feet of production wells or sites around schools. David Bacharowski also provided an explanation of GEMS Geotracker.

3. Santa Monica Bay –Chairman Nahai asked if the Prop 12 proposals received input from regional board staff. Marianne Yamaguchi stated that all groups at the Regional Board provided input. Chairman Nahai asked if we contacted all of the MS4s. Marianne Yamaguchi replied that they were contacted and many of the proposals received were from both large and small cities under storm water permit. Many of the projects went above and beyond permit requirements.

Marianne Yamaguchi then briefly described highlights of the accomplishments section of the status sheet: septic tank studies, Malibu Creek watershed, clean beaches initiative, Zuma Lagoon restoration, boater education programs, kelp restoration, and other restoration projects.

A general discussion of issues in the Malibu Creek watershed followed, including a Malibu area package plant, constructed wetland approach, the UCLA study and its possible use for a volume control approach, an update on the joint monitoring proposal for Hyperion and Carson plants in Santa Monica Bay, the pathogen TMDL in Malibu Creek and the resultant allocations.

Jon Bishop asked that f) in the Task Completion Status be deleted – in was inserted in error.

Ms. Cloke asked that we add information to item 3) such as when milestones are completed.

The general discussion continued focussing on allocation to septic tanks, which are currently not under consideration in the TMDL, but could be phased in or addressed under the Los Angeles County program handling Regional Board waiver of requirements or, following modeling results, prohibition of septic tanks.

4. Stormwater – Wendy Phillips stated that with the increased resources that commenced last fiscal year, the Regional Board has had a higher field presence; have increased the number of compliance inspections (as opposed to the Notice of Termination inspections); worked with State Board on the revised General Industrial Stormwater permit, due out in April; worked to shift the responsibility of construction inspections to the MS4 programs; and commenced audits of municipal programs (starting with Long Beach in August).

There was general acknowledgement of the success of the stormwater workshop held in July on the draft Los Angeles MS4 permit .

5. TMDLs – Jon Bishop discussed the schedule for TMDLs and the fact that multiple TMDLs will probably go to Board meetings this year. Deborah Smith added that many may be later than planned, and, as a result, some may be promulgated by the EPA. Since the Basin Plan will need to be revised to incorporate TMDLs, SWRCB needs to be informed of potential workload crunches that will occur at their level.

Chairman Nahai stated that he believes TMDLs should be identified as a high priority.



There was a general discussion on the need for 303(d) listing to have a scientific basis, reevaluate all waterbodies as needed, develop criteria for all listings, tie NPDES programs into TMDLs by putting mass limits in POTW permits, and evaluate the pollutant trading concept.

Action Item – Ms. Cloke requested that 303(d) listings include material defining the listing trigger(s).

6. Enforcement -- *Chairman Nahai* stated that MS4s need a higher enforcement presence.
7. Ms. Cloke had concerns about large penalties vs. Migden penalties. Paula Rasmussen responded that Migden penalties are now being done on a steady-state basis and that the larger enforcement actions are now more manageable, but that we can't get to everything. Dennis Dickerson expressed concern about the perception that, during legislative hearings, we show progress in issuing Migden penalties as compared to the number that could be issued and which are now in the backlog.
8. San Gabriel Groundwater - Art Heath discussed the contract help available from MWD for the investigation of groundwater problems in the South El Monte area. Art Heath stated that Superfund is a very slow process that is administered through the EPA.

Ms Diamond stated that status point number 5 (from the board priority tracking sheet) should be rephrased or dropped.

A general discussion of enforcement on the various regional board programs followed, including possible action by Paula Rasmussen's group, enforcement for missing report submittal deadlines, and random enforcement in different program areas, including groundwater cleanups.

9. Malibu - Ms. Cloke asked if we were working with other agencies. It was stated that we are.
10. Outreach - Chairman Nahai discussed the upcoming September 20 seminar at the LA County Bar Association. Board members will have a panel discussion of Regional Board functions.
11. Environmental Justice - Ms. Cloke requested that we add the name of the legal counsel to the "staff assigned" column on the board priority tracking sheet and that we put in the activities planned and their status, including the ACTA permit and Dominguez Channel, BRC, the order to the City of Los Angeles, spills that are going to our web site, and general information on TMDLs.

Action Item – Add legal staff to our organization chart and additional items as noted.

Action Item – Include legal personnel in the Staff Assignment column (may be another agency).

LUNCH BREAK

ADDITIONAL DISCUSSIONS

An expanded discussion of Supplemental Environmental Projects occurred, with the following highlights:

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Ms. Cloke – we are receiving a series of small penalty assessments with little impact. We should create a fund for SEPs, aggregate the monies, and do something meaningful. The penalties should benefit the impacted area (we shouldn't move money around geographically), and the Board priorities and Environmental Justice should be taken into account.

Tim Shaheen - would like more say in the determination of SEPs.

Dennis Dickerson – Regional Board 2 (Bay Area) uses a list of pre-approved SEPs. After approval, a Respondent to an ACL can select a SEP from the list which they would prefer to fund.

Michael Lauffer – stated that there is a potential liability involved in this scheme, and there is a resource demand necessary when managing SEP funds.

Chairman Nahai – suggested funding research, e.g., UCLA or SCCWRP.

Ms. Cloke – suggested a conference where invitees suggest SEPs.

Mr. Mindlin suggested that, once per quarter, end the board meeting with a discussion of SEP money available and possible projects for funding.

Mary Jane Foley – stated that the state enforcement policy is being revised. It is important to keep the penalties within the community (Penn Mine example). She suggested the use of the money for watershed monitoring, and especially for TMDL development.

Chairman Nahai – asked staff to make sure the SEP is not for something that is already covered under the permit.

Action Item – the Board asked Dennis Dickerson to prepare a briefing paper laying out the various options.

An expanded discussion of the Cleanup Memo followed, with the following new comments:

Deborah Smith stated that we are not precluded in the Basin Plan from including requirements other than MCLs for cleanup. We are allowed to change direction.

Jonathan – added that direction in the past was to use background. The Board has directed staff to use risk assessment in SLIC cases.

Ms. Diamond – asked if the discharger can claim that the Basin Plan requires the use of MCLs as the cleanup standard.

Dennis Dickerson – suggested that staff will formally respond to these additional comments in the memo that is being prepared on this topic.

Board Procedures

Mr. Mindlin led a discussion of the final topic, Board procedures. Among the issues covered:

Preparation for board meetings – is there a better way to do things or streamline the procedures. Is there a way to make board members aware of other issues?



Items to be heard at the board meetings are often pulled at the last minute because a lawyer writes a letter.

Do we as a regional board understand the priorities of other boards?

Chairman Nahai – stated that now material will not get less than 60 days of a timeline for processing, which may alleviate part of the problem. He suggests that Board members hold off on questions, similar to the stormwater workshop, and have staff presentation, discharger presentation, interested parties, and then Board questions.

Mr. Mindlin – stated that much of what is heard repeats the written record provided, and that all Board members read the written material and are well prepared.

Chairman Nahai – stated that it is a point of pride to hear all affected and interested parties, but that we should try asking the discharger “how much time are you going to require”, and lock them into the timeframe. We should also get more specific in allocating blocks of time.

Action Items – Try new procedure for questions

Hear minor matters in the morning

If an item is on the consent calendar and there are problems, continue the item. Staff shouldn't prepare a presentation for consent items.

The meeting concluded at 2:20 p.m.

